

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ANTHONY JOSEPH RICHARD §  
v. § CIVIL ACTION NO. 9:05cv28  
DIRECTOR, TDCJ-CID §

## ORDER

The Petitioner Anthony Richard filed this habeas corpus petition complaining of the legality of his confinement. The petition was dismissed and final judgment entered on June 17, 2005.

Richard filed a notice of appeal on July 6, 2005. He did not file a motion for a certificate of appealability along with his notice of appeal. Rule 22(b), Fed. R. App. P., states that if no express request for a certificate of appealability is filed, the notice of appeal shall be deemed to constitute a request **addressed to the judges of the court of appeals** (emphasis added). The Fifth Circuit has held that this language refers to the "procedure to be followed after the district judge has denied the request for a certificate of probable cause." U.S. v. Youngblood, 116 F.3d 1113, 1115 (5th Cir. 1997), *citing* Lozada v. U.S., 107 F.3d 12011, 1017 (2nd Cir. 1997). Thus, Richard's notice of appeal will be construed as including a request for a certificate of appealability.

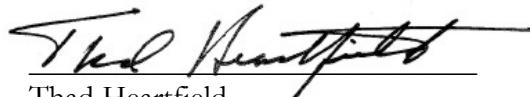
To obtain a certificate of appealability, a petitioner must make the same showing as was required for a certificate of probable cause. Else v. Johnson, 104 F.3d 82, 83 (5th Cir. 1997). The only difference is that the district court, in granting a certificate of appealability, must specify the issues to be appealed. Muniz v. Johnson, 114 F.3d 43, 45 (5th Cir. 1997).

The prerequisite for either a certificate of probable cause or a certificate of appealability is a substantial showing that the petitioner has been denied a federal right. Newby v. Johnson, 81 F.3d 567, 569 (5th Cir. 1996); James v. Cain, 50 F.3d 1327, 1330 (5th Cir. 1995). To do this, he must demonstrate that the issues are debatable among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are adequate to deserve encouragement to proceed further. James, 50 F.3d at 1330.

In this case, Richard has failed to show that he is entitled to a certificate of appealability. He has not made a showing that jurists of reason would find it debatable whether he has stated a valid claim of denial of a constitutional right. It is accordingly

ORDERED that the Petitioner's motion for a certificate of appealability, incorporated in his notice of appeal filed July 6, 2005, is DENIED.

**SIGNED** this the 20 day of **July, 2005**.



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Thad Heartfield  
United States District Judge